

December 15, 2011

via electronic filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.

RE: Notice of *Ex Parte* Meeting
Closed Captioning of Internet Protocol-Delivered
Video Programming: Implementation of the
Twenty-First Century Communications and Video
Accessibility Act of 2010
MB Docket No. 11-154

Dear Ms. Dortch:

On Wednesday December 14, 2011, Jim House, Outreach Coordinator for CEPIN at Telecommunications for the Deaf and Hard of Hearing Inc. (TDI), Cheryl Heppner, National Advocacy Director, Association of Late-Deafened Adults, Shane Feldman, Chief Operating Officer, National Association for the Deaf (NAD); Andrew Phillips, Policy Attorney, NAD, Dr. Christian Vogler, Director Technology Access Program, Gallaudet University, Lise Hamlin, Director of Public Policy, Hearing Loss Association of America, Blake Reid, Staff Attorney, Institute for Public Representation (IPR), and Lucas McFarland, Student Research Assistant, IPR (collectively "Consumer Groups") met with Thomas Apone, Media Bureau (MB); Steven Broeckaert, Senior Deputy Division Chief, Policy Division, MB; Rosaline Crawford, Consumer and Government Affairs Bureau (CGB); Eliot Greenwald, Disability Rights Office (DRO)/CGB; Roger Holberg DRO/CGB; Alison Neplokh, MB; Karen Peltz Strauss, Deputy Chief, CGB/DRO; and Diana Sokolow, MB to discuss the above referenced matter.

Consumer Groups reiterated our understanding of the definition of "near-live programming." We understand this category to mean programming that is prerecorded but released shortly thereafter, such as the late night talk shows featuring Jay Leno and Conan O'Brien. More specifically, Consumer Groups believe that any programming produced from start to finish within 24 hours of being published or exhibited on television is within the definition of "near-live programming" as the Commission noted in its recent Video Description Order. Thus, as we noted in our original comments, we are willing to accept an increase in the Commission's proposed 12-hour timeframe to 24 hours, but only if the term "substantively" is eliminated from the Commission's proposed definition. This compromise will serve to avoid potential confusion stemming from a nebulous percentage threshold for program production or vagueness surrounding the term "substantially" and harmonizes the definition of the term

in this context with the Commission's definition of the term in the context of video description.

We also reiterated the position from our comments and reply comments that Congress intended to define "full-length programming" by what it is not—namely, video clips and outtakes. Given the absence of additional guidance as to congressional intent in defining these terms and the overall intent of the CVAA, we believe it is reasonable for the Commission to limit "video clips" to promotional videos less than 30 seconds in length, and subject all other video programming to the Commission's captioning rules. Consumer Groups believe that this bright-line rule would best serve the interests of consumers and industry by addressing industry concerns over difficulties in captioning brief promotional clips and advertisements while ensuring that deaf and hard of hearing consumers are not denied equal access to video programming.

Congress found that people with disabilities often have not shared in the benefits of the rapid technological advancement in Internet-based and digital technologies and that they face disproportionately higher rates of unemployment and poverty than those without disabilities.¹ The CVAA was passed in order to improve access to IP-based communication and video programming technologies for people with disabilities and bridge the digital divide.² Thus, it is crucial to narrowly define video clips so that the vast majority of online video programming that was previously shown on television is required to be accessible by individuals who are deaf or hard of hearing.

We live in an information age where having the latest and best information is extremely important.³ Not being able to access news information online leaves individuals who are deaf and hard of hearing unable to fully participate in the marketplace, political discussions, and employment.

For example, CNN's website routinely contains some 150 video segments covering topics covering a spectrum of important political issues and other news, some as short in length from 44 seconds in length.⁴ Similarly, the websites of local Washington, DC broadcast affiliates contain many video segments on important local news ranging from one to three minutes in length.⁵ An overly

¹ See 47 U.S.C. § 255; S. Rep. No. 111-386, at 1-2 (2010) ("Senate Report"); H.R. Rep. No. 111-563, at 19 (2010) ("House Report").

² See Senate Report at 1; House Report at 19.

³ The United Nations recently published a report explaining that access to the Internet is a human right. See *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, United Nations Human Rights Council, 16 May 2011.

⁴ See <http://cnn.com/video>.

⁵ See, e.g., <http://www.nbcwashington.com/video/>.

expansive definition of “video clips” could result in the exclusion of these sites in their entirety from the CVAA’s captioning mandates.

It cannot have been Congress’s intent to prevent equal access to these important news sources for the deaf and hard of hearing community by removing them from the scope of the CVAA. Accordingly, we encouraged the Commission to adopt a bright line, 30-second rule for video clips that ensures that important news programming is accessible.

Consumer Groups also explained our concerns regarding potential confusion over the pass through and rendering of captions in the context of interconnected source video devices and display devices. We explained that there are two possible options for caption pass through and rendering: 1) captions are rendered on a source device, such as a set-top box or DVD player and imprinted on video for display on a television or display monitor; and 2) caption data is passed through an interconnection mechanism by the source device and decoded and rendered on the television or display monitor.

We believe that the second option is ideal in the long-term because it affords consumers the ability to adjust caption settings on a single display device for a panoply of source devices and importantly affords consumers who are deafblind the ability to increase captions to a readable size. We also noted that captioning pass through is technically possible using the Ethernet capabilities of version 1.4 of the High Definition Multimedia Interface (HDMI) specification. Moreover, we noted that while HDMI CEC capabilities could potentially allow controlling captions on all source devices via a single remote control, font display characteristics would be inconsistent across consumers’ various source devices. In contrast, the pass through of captioning data would permit consumers to shop for and adjust a single display device according to their exact needs—a particularly important consideration for consumers who are deafblind. Accordingly, we encouraged the Commission to adopt rules that would require industry to evolve HDMI and other interconnection standards to accommodate the pass through of captioning data.

Nevertheless, we recognized that current source devices may lack the ability to pass through captioning data via HDMI. Accordingly, we encouraged the Commission to ensure that all source devices capable of video playback, including IP-delivery set-top boxes and “playback-only” fixed media devices such as DVD and Blu-ray players, are capable of rendering captions for imprint as soon as possible so that consumers can experience high-definition and quasi-high-definition video and other important modern programming features with captions included, in line with congressional intent.

Finally, we noted that the Commission recognized during the digital television transition the importance of implementing advanced captioning features to facilitate equal access to video programming for consumers who are deaf or hard

of hearing.⁶ We expressed our concern that not requiring those features in the context of IP-delivered programming could constitute a dramatic step backwards in terms of equal access for consumers with disabilities to the cutting-edge video delivery systems of the twenty-first century. Accordingly, we urged the Commission to take decisive action to ensure that the full potential of these features is realized in the context of IP-delivered programming by adopting rules mandating the features required by CEA-708 as well as those in Appendix C of the VPAAC Report. We also explained the need to adopt the VPAAC's performance objectives in their entirety.

For a person who is deaf or hard of hearing, the ability to adjust the size or capitalization of captions is akin to a hearing person being able to adjust the volume of a television show. If the volume is too quiet, a hearing person may be unable to understand or follow the programming. Likewise, if captions are too small or are displayed in a color or background color that reduces their visibility, a person who is deaf or hard of hearing or who has both hearing and vision disabilities may be unable to read them, potentially precluding the ability to understand the programming. The ability to adjust the size or select full capitalization of captions is particularly important for people who are deafblind or who have limited vision. Another important consideration is that CEA-608 features do not support or have problems rendering certain Asian languages.

Congress enacted the CVAA to improve access for individuals with disabilities, and being able to adjust the caption features is important to ensuring access for individuals who are deaf or hard of hearing. The one-size fits all model adopted by programmers and device manufacturers thus far must evolve to allow consumers to use true CEA-708 capabilities and other modern captioning features, such as the ability to choose caption placement on the screen.

Please contact us if we can be of further assistance in this matter.

Respectfully submitted,

/s/

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⁶ E.g., Report and Order, Closed Captioning Requirements for Digital Television Receivers, at ¶ 13 (2000), *available at* http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-00-259A1.pdf.